

EXHIBIT H

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VOLUME II

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Methyl Tertiary Butyl:MDL NO. 1358 (SAS)
Ether ("MTBE") :
Products Liability :
Litigation :

In Re: City Of New York

CONFIDENTIAL (Per 2004 MDL 1358 Order)

April 9, 2009

Continued CONFIDENTIAL
Videotaped Deposition of MARCEL G. MOREAU,
held in the law offices of McDermott,
Will & Emery, 340 Madison Avenue, New
York, New York, beginning at
approximately 8:59 a.m., before Ann V.
Kaufmann, a Registered Professional
Reporter, Certified Realtime Reporter,
Approved Reporter of the U.S. District
Court, and a Notary Public.

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<p style="text-align: right;">Page 413</p> <p>1 of your report, Mr. Moreau.</p> <p>2 A. As best I can recall, the</p> <p>3 instructions were to identify, insofar</p> <p>4 as possible, any releases that may have</p> <p>5 occurred at this facility. I don't</p> <p>6 recall the specific instruction to</p> <p>7 identify a release source, but that's</p> <p>8 something that I usually try and</p> <p>9 identify when I'm looking for releases.</p> <p>10 Q. And what I'm really</p> <p>11 inquiring about is under the heading of</p> <p>12 "Findings" you have a subheading of</p> <p>13 "Release Source," a subheading of "How</p> <p>14 Releases Were Discovered," "Volume</p> <p>15 Released," and "Timing of Releases."</p> <p>16 And my question really is,</p> <p>17 with respect to those categories, was</p> <p>18 there a specific request made of you</p> <p>19 that when you were reviewing these</p> <p>20 documents, you should identify, if</p> <p>21 possible, the release source, how the</p> <p>22 release was discovered, the volume of</p> <p>23 the release, and the timing of the</p> <p>24 release?</p>	<p style="text-align: right;">Page 415</p> <p>1 not receive any detailed instructions to</p> <p>2 look for releases of 2,000 gallons or</p> <p>3 greater or make that a focus of my</p> <p>4 review.</p> <p>5 Q. With respect to the work</p> <p>6 that you performed in your rebuttal</p> <p>7 expert site-specific report, were you</p> <p>8 asked at that time to determine which</p> <p>9 sites, if any, had releases of greater</p> <p>10 than 2,000 gallons of gasoline with MTBE</p> <p>11 that entered groundwater beneath any of</p> <p>12 the sites you reviewed?</p> <p>13 A. As best I can recall, the</p> <p>14 rebuttal report came about or the</p> <p>15 discussion in the rebuttal report about</p> <p>16 releases of greater than 2,000 gallons</p> <p>17 came about from a review of defendants'</p> <p>18 experts' reports, one of which indicated</p> <p>19 that release volumes used by other</p> <p>20 experts were not consistent with release</p> <p>21 volumes identified by my report. So --</p> <p>22 and specifically that the release</p> <p>23 volumes used in other experts' reports</p> <p>24 were too large and that there were no</p>
<p style="text-align: right;">Page 414</p> <p>1 A. Just for the benefit of</p> <p>2 anybody reading the record, when we say</p> <p>3 "release source," we are talking about a</p> <p>4 component of a storage system --</p> <p>5 Q. Correct.</p> <p>6 A. -- not a place in space and</p> <p>7 time.</p> <p>8 Again, as far as I recall,</p> <p>9 the instruction was to identify</p> <p>10 releases, and there may have been</p> <p>11 instructions about volume and timing.</p> <p>12 It was a very generic assignment.</p> <p>13 That's all I can recall at the moment.</p> <p>14 Q. Now with regard to the</p> <p>15 release volume, were you at any point in</p> <p>16 time prior to preparing your report,</p> <p>17 Exhibit 16, asked to identify release</p> <p>18 sites at which you believe volumes of</p> <p>19 2,000 gallons of gasoline with MTBE or</p> <p>20 greater were released into the</p> <p>21 environment and entered groundwater at</p> <p>22 the site?</p> <p>23 A. As I indicated earlier, the</p> <p>24 instructions were very generic. I did</p>	<p style="text-align: right;">Page 416</p> <p>1 releases of that magnitude identified.</p> <p>2 So I don't know that I got an</p> <p>3 instruction.</p> <p>4 I think as part of the</p> <p>5 conference call the question may have</p> <p>6 been asked, who can address this</p> <p>7 particular issue?</p> <p>8 And I may have volunteered</p> <p>9 and said, you know, that's -- you know,</p> <p>10 I have some things that I can say about</p> <p>11 that based on the site summaries that we</p> <p>12 did. I don't recall a specific</p> <p>13 instruction from counsel to do that.</p> <p>14 MR. STACK: With respect to</p> <p>15 your work in this matter, I will ask the</p> <p>16 court reporter to mark a document as</p> <p>17 Exhibit 30. Exhibit 30 is labeled as</p> <p>18 "Expert Site Specific Rebuttal Report of</p> <p>19 Marcel Moreau, March 23, 2009."</p> <p>20 (Above-described document</p> <p>21 marked as Moreau Exhibit 30.)</p> <p>22 BY MR. STACK:</p> <p>23 Q. I will provide a copy to</p> <p>24 you. I will provide a copy to your</p>

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<p>1 Boulevard.</p> <p>2 Q. Okay. And the 35 Junction</p> <p>3 Boulevard station was branded as Getty;</p> <p>4 am I correct?</p> <p>5 A. That's what the site</p> <p>6 summary indicates, that's correct.</p> <p>7 Q. And with respect to this</p> <p>8 particular location, the maximum</p> <p>9 reported concentration of MTBE in</p> <p>10 groundwater was 6.9 parts per billion;</p> <p>11 am I correct?</p> <p>12 A. On specific date in 2001 --</p> <p>13 or for the documentation dated 2001,</p> <p>14 that was the indicated maximum amount in</p> <p>15 whatever document that was.</p> <p>16 Q. Based on your review of the</p> <p>17 documents that were available to you</p> <p>18 pertaining to the service station at</p> <p>19 35-25 Junction Boulevard in Corona, can</p> <p>20 you state an opinion to a reasonable</p> <p>21 degree of scientific or engineering</p> <p>22 probability that a leak or spill at this</p> <p>23 station resulted in a 2,000-gallon</p> <p>24 release of gasoline with MTBE into</p>	<p>1 on what I have here in the site summary,</p> <p>2 did not include any site remediation</p> <p>3 data.</p> <p>4 Q. The entry that appears on</p> <p>5 the first line in the summary in the</p> <p>6 boxes appearing below the text, it</p> <p>7 indicates in '97 and 2002 there are</p> <p>8 "Invoices for leak detection services,"</p> <p>9 and it says "(Fire Department)." Do you</p> <p>10 know what that is a reference to?</p> <p>11 A. I recall reading in the</p> <p>12 Fire Department regulations that there</p> <p>13 were fees associated with certain</p> <p>14 activities and this may relate to that.</p> <p>15 But as I sit here today, without</p> <p>16 actually reviewing the source documents,</p> <p>17 I can't give you a hard-and-fast answer.</p> <p>18 Q. Do you know if the Fire</p> <p>19 Department of the City of New York</p> <p>20 required that they were in attendance</p> <p>21 during any tank testing activities at</p> <p>22 service stations in Queens?</p> <p>23 A. That may relate to the fees</p> <p>24 that were in the regulations; but,</p>
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<p>1 groundwater in the regional aquifer</p> <p>2 beneath the site?</p> <p>3 A. With the information</p> <p>4 available, it's not possible to</p> <p>5 determine the magnitude of any release</p> <p>6 that may have occurred from this</p> <p>7 facility, be it 10 gallons or 10,000</p> <p>8 gallons.</p> <p>9 Q. With respect to the service</p> <p>10 station that you next have in your text,</p> <p>11 that would be which one?</p> <p>12 A. In Exhibit 16 the next</p> <p>13 station is 49-04 College Point Boulevard</p> <p>14 in Flushing.</p> <p>15 Q. And with regard to this</p> <p>16 service station, it was branded as what</p> <p>17 refiner's brand?</p> <p>18 A. The document indicates it</p> <p>19 was branded BP Amoco.</p> <p>20 Q. Was there any data</p> <p>21 reflecting testing of soil for the</p> <p>22 presence of contamination at this site</p> <p>23 in the materials that you reviewed?</p> <p>24 A. It appears this file, based</p>	<p>1 again, I don't have any definitive</p> <p>2 opinion about that at this point in</p> <p>3 time.</p> <p>4 Q. With regard to this service</p> <p>5 station at 49-04 College Point Boulevard</p> <p>6 in Flushing, can you state an opinion to</p> <p>7 any reasonable degree of scientific or</p> <p>8 engineering probability that a leak or</p> <p>9 spill at this station resulted in a</p> <p>10 2,000-gallon release of gasoline with</p> <p>11 MTBE to groundwater in the regional</p> <p>12 aquifer beneath the site?</p> <p>13 A. With the information at</p> <p>14 hand, it's not possible to offer an</p> <p>15 opinion about whether or not a release</p> <p>16 of 2,000 gallons or any amount of</p> <p>17 gallons occurred at this particular</p> <p>18 site.</p> <p>19 Q. Is there anything, though,</p> <p>20 to indicate for this site that there was</p> <p>21 a release of 2,000 gallons?</p> <p>22 A. If you were to accumulate</p> <p>23 the inventory losses which are</p> <p>24 unaccounted-for losses and may be</p>

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<p>1 indicative of releases, you would come 2 up with approximately 1,600 gallons of 3 unaccounted-for product. Again, that is 4 unaccounted-for product, not necessarily 5 a release.</p> <p>6 But other than that 7 information, there is no other 8 information that I can see here in this 9 summary that would allow you to say 10 whether a release of 10 gallons or 11 10,000 gallons occurred at this site.</p> <p>12 Q. With regard to the 13 inventory analysis that was reviewed for 14 the site at 49-04 College Point 15 Boulevard, are you able to state an 16 opinion to a reasonable degree of 17 scientific or engineering certainty that 18 the unaccounted-for inventory was 19 actually released into the environment?</p> <p>20 A. Without corroborating 21 evidence, all we can say is that there 22 is an unaccounted-for loss of product 23 over the periods indicated based on the 24 inventory control records. Without the</p>	<p>1 investigation conducted at this site.</p> <p>2 Q. And with respect to those 3 documents, they would indicate what in 4 terms of the maximum concentration of 5 MTBE that was detected in groundwater at 6 the site?</p> <p>7 A. From the site summary data, 8 it doesn't appear that groundwater 9 samples were analyzed for MTBE.</p> <p>10 Q. And with respect to the 11 site which is the Texaco site you are 12 referring to, is there any indication 13 that there was a release of 2,000 14 gallons of gasoline with MTBE at that 15 site?</p> <p>16 A. There's insufficient 17 information in this site summary to 18 determine the magnitude of any releases 19 that may have occurred from this 20 facility.</p> <p>21 Q. And recognizing there is 22 insufficient information, can you state 23 definitively with any reasonable degree 24 of scientific or engineering certainty,</p>
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<p>1 corroborating evidence, it is not 2 possible to say whether that product was 3 lost into the ground or was unaccounted 4 for for other reasons.</p> <p>5 Q. Now, what is the next 6 service station which is identified in 7 the materials which you reviewed in your 8 site-specific report?</p> <p>9 A. The next facility 10 identified in Exhibit 16 is 65-07 11 Woodhaven Boulevard in Queens.</p> <p>12 Q. And that is a station that 13 would appear to be branded under what 14 refiner's brand?</p> <p>15 A. There are two listed, both 16 Texaco and Chevron.</p> <p>17 Q. And with respect to that 18 location, do you have any environmental 19 monitoring data to indicate the presence 20 of contamination in soil or groundwater 21 at that site?</p> <p>22 A. There are documents in the 23 file that would indicate there was some 24 level of site remediation or site</p>	<p>1 that there was leak of at least 2,000 2 gallons released at this station?</p> <p>3 A. The information at hand, it 4 is not possible to say whether there was 5 or was not a release of 2,000 gallons 6 from this facility at any point in time.</p> <p>7 Q. I'd like to turn now to the 8 service station which is identified as 9 being a Mobil station at 84-04 Parsons 10 Boulevard.</p> <p>11 MS. GOAD: That's three 12 stations ahead of where we were.</p> <p>13 MR. STACK: Correct. 14 There's actually a method to the 15 madness.</p> <p>16 A. Okay.</p> <p>17 Q. This was a summary prepared 18 by whom?</p> <p>19 A. The initial summary was 20 prepared by Christina Ferland.</p> <p>21 Q. And with regard to the 22 location of these records, the records 23 that you reviewed for the site came from 24 what source or sources? It looks like</p>

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<p>1 product is not correct. 2 The correct data is 3 presented in the site-specific rebuttal 4 report. 5 BY MR. STACK: 6 Q. That data indicates what in 7 the site-specific rebuttal report? 8 A. In the original -- in the 9 rebuttal report the number is -- the 10 cumulative amount of product loss is 11 4,317 gallons, and in the original 12 report the total amount of product lost 13 is listed as 2,823. 14 Q. Okay. With respect to the 15 Armory site, did you determine for 16 purposes of that location how many 17 gallons of fuel were released in the 18 various0 spill reports associated with 19 that location? 20 A. Can I have that question 21 again, please? 22 Q. Yes. Did you determine for 23 the Armory location at 93-05 168th 24 Street, Jamaica, Queens for each of the</p>	<p>1 contamination of the regional aquifer in 2 the area? 3 A. From a review of the site 4 summary, I don't see that we have any 5 subsurface investigation data concerning 6 this facility. So at this point in 7 time, I don't have any information on 8 which to state whether a release of 9 2,000 gallons did or did not occur at 10 this facility. 11 Q. With regard to the sites 12 that you reviewed, you also reviewed a 13 Long Island Railroad Hillside Support 14 Facility site, the Upper Holban Yard at 15 93-59 183rd Street, Hollis, Queens. Do 16 you have that in front of you? 17 A. Yes, I do. 18 Q. With respect to that 19 location, there was some contamination 20 noted at that location, am I correct, 21 soil contamination? 22 A. It appears there was some 23 documented soil contamination present at 24 this site.</p>
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<p>1 spill events reported to the DEC how 2 many gallons of fuel were released? 3 A. There are certain spill 4 events that are associated with certain 5 spill volumes that were reported to the 6 DEC. Those numbers are cited in the 7 site summary, where they exist. That's 8 the only information I have. It's not 9 my opinion that that was the volume 10 released. That was the volume recorded. 11 Q. Do you have an opinion with 12 respect to the volume of gasoline with 13 MTBE that may have been released from 14 this facility? 15 A. At this point in time, 16 based on the information that I have 17 here in the site summary, I do not have 18 an estimate of the volume of gasoline 19 that may have been released from this 20 facility. 21 Q. Is there any evidence in 22 the materials that you reviewed that 23 there was a 2,000-gallon release of 24 gasoline at this site which resulted to</p>	<p>1 Q. With respect to this 2 location in -- I'm looking at the 3 corrected summary of releases attached 4 to your supplemental -- pardon me -- 5 your rebuttal report, you have estimated 6 the gallons released in the spill events 7 that occurred at the 93-59 183rd Street, 8 Hollis, Queens facility; am I correct? 9 A. I reported the numbers that 10 were stated in the spill reports in that 11 table. 12 Q. With regard to this 13 facility, is there any groundwater data 14 that you reviewed and noted in your 15 summary to indicate any detection of 16 MTBE in the groundwater at this site? 17 A. For this facility it 18 doesn't appear that MTBE was analyzed 19 for when groundwater samples were taken, 20 so we don't have any information as to 21 levels of MTBE that may or may not have 22 been present in the groundwater at the 23 site. 24 Q. The next station I would</p>

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<p>1 like to turn your attention to is a Hess 2 station located at 104-09 Atlantic 3 Avenue and it is Hess station 32318. 4 With respect to that location you, 5 yourself, prepared the summary; am I 6 correct? 7 A. That appears to be true, 8 yes. 9 Q. With regard to this 10 location, is there any evidence of MTBE 11 contamination in groundwater in the 12 materials that you reviewed concerning 13 this site? 14 A. The question was, is there 15 evidence for MTBE contamination in 16 groundwater? 17 Q. At this site, yes, sir. 18 A. At this site. Yes, there 19 are a few samples that were analyzed for 20 MTBE at this site. 21 Q. And with regard to those 22 samples, am I correct that the maximum 23 groundwater level detected for MTBE was 24 128 parts per billion?</p>	<p>1 transport of such releases. So I have 2 no opinion as to whether any releases 3 from this site may have reached the 4 regional groundwater aquifer beneath it. 5 Q. And respect to this site, 6 do you have any opinion to a reasonable 7 degree of scientific or engineering 8 certainty as to whether there was a 9 release of 2,000 gallons of gasoline at 10 this location? 11 A. With the evidence at hand, 12 it's not possible to determine whether 13 the volume of the releases that occurred 14 at this facility, whether they were 10 15 gallons or 10,000 gallons. 16 Q. You do note here in your 17 summary that there was 192 tons of 18 contaminated soil removed in December of 19 2001 when the station did an upgrade; am 20 I correct? 21 A. That's what the summary 22 report states, that's correct. 23 Q. And with regard to the 192 24 tons of contaminated soil, did you see</p>
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<p>1 A. That's the maximum level 2 that we saw in the test results that we 3 were reviewing, that is correct. 4 Q. And with respect to this 5 facility, is there any evidence to 6 indicate at this location that there was 7 a release of 2,000 gallons of gasoline 8 with MTBE that entered the groundwater 9 beneath the site? 10 A. With the evidence at hand, 11 it's not possible to determine the 12 actual volume of any releases that may 13 have occurred from this site. 14 Q. With respect to this 15 location, are you able to state an 16 opinion to a reasonable degree of 17 scientific or engineering certainty that 18 a leak or spill at this station resulted 19 in 2,000 gallons of gasoline entering 20 the regional groundwater aquifer beneath 21 this location? 22 A. My assignment in this case 23 was to look at the timing and volume and 24 origin of releases and not the fate or</p>	<p>1 any soil sampling data to indicate 2 exactly how much contamination was 3 contained in those 192 tons? 4 MS. GOAD: Objection, vague 5 as to "how much contamination." 6 Q. I will restate it. Did you 7 do any quantifiable analysis to 8 determine how much gasoline with MTBE 9 was present in the 192 tons of 10 contaminated soil removed? 11 A. With the evidence contained 12 in the site summary, there is no 13 indication of the level of contamination 14 of the 192 tons of soil that were 15 removed in 2001, so it's not possible to 16 do any kind of an estimate of the volume 17 of gasoline that may have been removed 18 as part of that soil removal. 19 Q. In other work that you've 20 done in your professional capacity, have 21 you had available to you information 22 concerning the concentration of 23 petroleum hydrocarbons in soils which 24 would permit you to estimate how much</p>

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<p>1 clean soil that's removed is not labeled 2 as contaminated. So in terms of how 3 much overexcavation, the term is not 4 used, as far as I can recall, with 5 regard to this facility. 6 Q. Is there anything in the 7 records you reviewed to indicate that 8 MTBE was present in the 192 tons of soil 9 removed? 10 A. All we know about the 192 11 tons is that it was contaminated soil. 12 There was no analysis conducted, as far 13 as I can tell, that would indicate the 14 exact nature of that contamination. 15 Q. Can you state an opinion to 16 any reasonable degree of engineering or 17 scientific certainty based on the 18 documents you reviewed concerning the 19 Hess station at 104-09 Atlantic Avenue 20 as to whether or not the contaminated 21 soil removed contained any MTBE? 22 A. With the information at 23 hand, which does not include any 24 analysis of the soil that was removed,</p>	<p>1 Q. With regard to the 2 documents you reviewed, the documents 3 indicate that MTBE was detected in 4 groundwater at 2,800 parts per billion; 5 is that correct? 6 A. That's what the document 7 indicates, that's correct. 8 Q. And with respect to the 9 information that you have reviewed here, 10 were you able to quantify how much 11 gasoline with MTBE may have been 12 released from this location? 13 A. Based on the information 14 that we had available for this location, 15 we were not able to arrive at a volume 16 of product that may have been released 17 from this site. 18 Q. With respect to this 19 location, can you state an opinion to a 20 reasonable degree of scientific or 21 engineering certainty that a leak or 22 spill at this site resulted in a 23 2,000-gallon release? 24 A. The information that's</p>
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<p>1 contaminated soil that was removed, that 2 would indicate the nature of the 3 contamination, it's not possible to say 4 one way or the other whether MTBE was 5 present as a contaminant in those 192 6 tons of contaminated soil that were 7 removed. 8 Q. With regard to the service 9 station at 104-09 Atlantic Avenue, was 10 there anything in the records to 11 indicate that it had a bay drain on-site 12 disposal system? 13 A. Based on the site summary 14 that I have, the document is silent as 15 to whether or not there was a bay drain 16 on-site disposal system in place at this 17 facility. 18 Q. With regard to the service 19 stations you reviewed, I would like to 20 turn our attention next to 105-15 21 Merrick Boulevard, Jamaica, Queens, a 22 CITGO station. Do you have that in 23 front of you? 24 A. I do.</p>	<p>1 available for this site relative to a 2 release indicates that a release did 3 occur, but the volume of the release 4 cannot be established. 5 Q. With regard to the next 6 service station, and I believe it is the 7 next, but I could be wrong about that, 8 Mr. Moreau, at 108-01 Atlantic Avenue, 9 Richmond Hills, Shell station 138695, do 10 you have that in front of you? 11 A. I do. 12 Q. With respect to this 13 location, were you able to quantify how 14 much gasoline, if any, may have been 15 released at this site? 16 A. There is documentation in 17 the record of a 10- to 15-gallon -- what 18 was reported as a 10- to 15-gallon spill 19 from a dispenser in the 1990 time 20 frame. There are other spill numbers in 21 the file. There's no other information 22 as to the total amount of product that 23 might have been released from this 24 facility.</p>

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<p>1 Q. With regard to this 2 facility, looking at the third page of 3 three pertaining to the summary, am I 4 correct that in September of 2000 in the 5 site status report January 1999 sampling 6 showed no BTEX or MTBE detected in 7 groundwater?</p> <p>8 A. That's a correct reading of 9 the document. The abbreviation there is 10 January of '99 environmental site 11 assessment did not find BTEX or MTBE in 12 the groundwater in whatever samples were 13 taken at that time.</p> <p>14 Q. And with respect to the 15 entry further down that page, there's an 16 entry that says April 2003, May 2004 17 GRASP report, "BTEX and MTBE in 18 groundwater not detected."</p> <p>19 Am I correct that the 20 records indicated that sampling in 2003 21 and 2004 indicated no MTBE in the 22 groundwater at that site?</p> <p>23 A. If that was a GRASP report, 24 it probably came from a small number of</p>	<p>1 reports that you reviewed?</p> <p>2 A. Well, that's what was -- 3 that's what's indicated in the site 4 summary, so that's what should be 5 indicated in the reports that are 6 associated with that particular tank 7 removal.</p> <p>8 Q. With respect to the 9 investigation pertaining to the removal 10 of the 550-gallon heating oil UST 11 closure, was there any evidence to 12 indicate that there was any MTBE 13 detected in soil or groundwater as a 14 result of that tank removal?</p> <p>15 A. I'm seeing indicated on the 16 summary that there was post-excavation 17 sampling conducted, but I don't see any 18 results of that sampling indicated. So 19 I can't really say whether or not MTBE 20 was present in the soil samples that may 21 have been taken as a result of the 22 removal of the 550-gallon heating oil 23 UST in December of 2004.</p> <p>24 Q. With respect to the</p>
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<p>1 monitoring wells. But for whatever 2 wells were sampled at that time, the 3 results indicated that there was no BTEX 4 or MTBE in those particular samples.</p> <p>5 Q. With regard to the 6 documentation you reviewed, did you 7 confirm that the spill report 04-11343 8 was a spill of heating oil from a 9 550-gallon tank?</p> <p>10 A. I'm sorry. What was the 11 spill number again?</p> <p>12 Q. Spill -- it's on the first 13 page, Marcel. It is Spill No. 14 04-11343. That was related to removal 15 of a 550-gallon heating oil tank. Did 16 you understand that?</p> <p>17 A. That's what the site 18 summary indicates, that's correct.</p> <p>19 Q. With respect to that site 20 summary, you note in the first item in 21 the table that it was a 550-gallon 22 heating oil uST closure and there were 23 no soil impacts or odors during the tank 24 removal, am I correct, at least in the</p>	<p>1 evidence that you've seen in this case, 2 is there anything to indicate in the 3 materials that you reviewed that there 4 was a 2,000-gallon release of any 5 petroleum products with MTBE at this 6 site?</p> <p>7 A. The -- outside of that one 8 release incident involving 10 -- well, a 9 reported 10 to 15 gallons of gasoline, 10 there are no other records of spill 11 volumes indicated for this facility. I 12 think in the absence of any other 13 information, it's not possible to say 14 what the volume or total volume of 15 product released from this site might 16 have been.</p> <p>17 Q. With respect to the service 18 stations you reviewed, I would like to 19 direct your attention next to the 20 service station at 113-21 Merrick 21 Boulevard, Jamaica. It's an ExxonMobil, 22 04318.</p> <p>23 With respect to this 24 location, the first spill report, is</p>

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<p>1 My question is, as part of</p> <p>2 your work in this case, when they</p> <p>3 excavated this site and removed 200 tons</p> <p>4 of petroleum-contaminated soil, is there</p> <p>5 any way to tell which source caused or</p> <p>6 contributed to the contamination? Was</p> <p>7 it the stormwater runoff from the Van</p> <p>8 Wyck? Was it the leakage from the sewer</p> <p>9 that's also referred to here as</p> <p>10 affecting perturbations in the water</p> <p>11 table? Is it the discharges? Is it</p> <p>12 customer releases? Is it overfills by</p> <p>13 truck drivers? Is it a release at the</p> <p>14 dispenser where there was a filter</p> <p>15 problem? Or was it the cesspool or the</p> <p>16 French drain?</p> <p>17 MS. GOAD: Objection,</p> <p>18 compound, lacks foundation. Objection</p> <p>19 to the form of the question.</p> <p>20 You may answer, if you</p> <p>21 understand it.</p> <p>22 A. Well, with the information</p> <p>23 in front of me today, I don't think I</p> <p>24 can address that question. I think if</p>	<p>1 A. With the information in</p> <p>2 front of me today, I don't think I can</p> <p>3 answer that question. I think it may be</p> <p>4 possible to answer at least portions of</p> <p>5 that question if we had the raw or the</p> <p>6 full site file in front of me.</p> <p>7 MR. STACK: The videographer</p> <p>8 has informed me we are about to run out</p> <p>9 of time, so we are going to take a</p> <p>10 break, give him a chance to change his</p> <p>11 tape and then resume.</p> <p>12 THE VIDEOGRAPHER: We're</p> <p>13 going off the record. The time is</p> <p>14 2:40 p.m. This is the end of tape 4 of</p> <p>15 the deposition of Marcel Moreau.</p> <p>16 (Ms. Brillault left the</p> <p>17 deposition room.)</p> <p>18 (Recess.)</p> <p>19 THE VIDEOGRAPHER: Back on</p> <p>20 the record. The time is 2:57 p.m. This</p> <p>21 is the start of tape 5 of the deposition</p> <p>22 of Marcel Moreau.</p> <p>23 BY MR. STACK:</p> <p>24 Q. With respect to the service</p>
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<p>1 we had a site diagram, which may be</p> <p>2 present in some of the original</p> <p>3 documents, it might be possible to</p> <p>4 isolate -- it could be that the cesspool</p> <p>5 or dry well or whatever it was is over</p> <p>6 here and the tanks were over here. I</p> <p>7 don't know the relationship of any of</p> <p>8 these features on this site. So with</p> <p>9 the information that I have, I can't</p> <p>10 point to the interrelationships of all</p> <p>11 those variables that you mentioned in</p> <p>12 your question.</p> <p>13 Q. Fair to say that based on</p> <p>14 the information that you had available</p> <p>15 to you, you would not be able to</p> <p>16 allocate to any particular source of</p> <p>17 petroleum hydrocarbons that may have</p> <p>18 released material to soils or</p> <p>19 groundwater at the site which may have</p> <p>20 been responsible for what portion of the</p> <p>21 contamination excavated in the form of</p> <p>22 200 tons of petroleum-contaminated soil?</p> <p>23 MS. GOAD: Objection, vague</p> <p>24 as to "responsible."</p>	<p>1 station at 113-21 Merrick Boulevard, are</p> <p>2 you able to state an opinion to a</p> <p>3 reasonable degree of scientific or</p> <p>4 engineering certainty that there was a</p> <p>5 release of 2,000 gallons of gasoline</p> <p>6 with MTBE which found its way into the</p> <p>7 regional groundwater table beneath the</p> <p>8 site?</p> <p>9 A. There's good evidence to</p> <p>10 indicate there was a release from this</p> <p>11 site. However, the volume of that</p> <p>12 release -- it's not possible to</p> <p>13 establish the volume of that release</p> <p>14 with the information that I have</p> <p>15 reviewed to date.</p> <p>16 Q. The next service station</p> <p>17 site that I would like to review with</p> <p>18 you is the service station at 118-02</p> <p>19 Queens Boulevard, Forest Hills.</p> <p>20 A. 118 --</p> <p>21 Q. 118-02 Queens Boulevard,</p> <p>22 Forest Hills, Chevron No. 121096.</p> <p>23 MS. GOAD: It is about two</p> <p>24 stations forward from our last</p>

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<p>1 discussion.</p> <p>2 Q. I'm sorry, because I may</p> <p>3 have just gotten them out of order. I</p> <p>4 apologize.</p> <p>5 A. I found it.</p> <p>6 Q. With respect to this</p> <p>7 service station, did you see any</p> <p>8 information to indicate that there was a</p> <p>9 release of gasoline resulting in</p> <p>10 detectable quantities of MTBE in the</p> <p>11 groundwater at the site?</p> <p>12 A. There is evidence of MTBE</p> <p>13 contamination in groundwater beneath</p> <p>14 this site.</p> <p>15 Q. And with respect to that</p> <p>16 evidence, the evidence relates to</p> <p>17 sampling from which well and at what</p> <p>18 time? And my confusion is that there's</p> <p>19 a '94 result that's 38,700 and there's a</p> <p>20 statement that there's a maximum</p> <p>21 detection of 38,000 -- pardon me,</p> <p>22 38,700, 38,000. Is that one and the</p> <p>23 same?</p> <p>24 When you look at this page,</p>	<p>1 550-gallon USTs that were tested, do you</p> <p>2 know if they were in -- 12 550-gallon</p> <p>3 USTs tested, do you know if they were</p> <p>4 encased in concrete?</p> <p>5 A. I don't see any</p> <p>6 information -- excuse me just a minute</p> <p>7 here. I don't see any information in</p> <p>8 the site summary in front of me that</p> <p>9 would indicate whether or not the 12</p> <p>10 tanks that were tested and failed in</p> <p>11 1986 were encased in concrete.</p> <p>12 Q. With regard to this service</p> <p>13 station site, can you estimate what</p> <p>14 volume of gasoline may have been</p> <p>15 released into the environment from any</p> <p>16 of the vessels or conveyances for</p> <p>17 gasoline at the site?</p> <p>18 A. Based on the information</p> <p>19 that we have at hand, we were not able</p> <p>20 to arrive at a volume for the amount of</p> <p>21 product that may have been released from</p> <p>22 this site.</p> <p>23 Q. And with regard to this</p> <p>24 site, can you state an opinion to a</p>
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<p>1 you look at entry 55 at the top of</p> <p>2 Page 2 of 3 --</p> <p>3 A. Correct.</p> <p>4 Q. -- is that the reference</p> <p>5 for the concentration of MTBE in</p> <p>6 groundwater which is also cross-</p> <p>7 referenced in the summary paragraph at</p> <p>8 38,000 parts per billion?</p> <p>9 A. Yes. In the summary</p> <p>10 paragraph it is listed as 38,000 and in</p> <p>11 the table itself it is listed as</p> <p>12 38,700. I believe those are probably</p> <p>13 the same number. And so the date is</p> <p>14 1994 and monitoring well number 1</p> <p>15 apparently has a concentration of</p> <p>16 approximately 38,000. 38-seven might be</p> <p>17 the actual number that's reported.</p> <p>18 Q. With regard to the USTs</p> <p>19 that were tested in 1986, they</p> <p>20 apparently failed the tank tightness</p> <p>21 testing criteria; am I correct?</p> <p>22 A. That's what's reported in</p> <p>23 the summary, that's correct.</p> <p>24 Q. And with regard to the 12</p>	<p>1 reasonable degree of scientific or</p> <p>2 engineering certainty that a release of</p> <p>3 more than 2,000 gallons of gasoline with</p> <p>4 MTBE occurred at this facility?</p> <p>5 A. There's evidence for a</p> <p>6 release, but with the information at</p> <p>7 hand, we're not able to put a number on</p> <p>8 the volume of product that -- of product</p> <p>9 that may have been released with or</p> <p>10 without MTBE.</p> <p>11 Q. With regard to the gasoline</p> <p>12 that was detected in the soil and the</p> <p>13 gasoline components detected in</p> <p>14 groundwater, do you know for this</p> <p>15 facility at what time the release may</p> <p>16 have occurred?</p> <p>17 A. I think we can state that</p> <p>18 there was a release prior to 1994, but</p> <p>19 the exact timing of the release I don't</p> <p>20 believe can be established with the</p> <p>21 information that we have at hand.</p> <p>22 Q. With regard to the service</p> <p>23 stations which you reviewed for your</p> <p>24 site-specific report, I would like to</p>

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<p>1 turn next to the service station 2 identified as being located at 118-11 3 Atlantic Avenue, an Exxon station. This 4 location is a location where there is 5 some evidence of soil contamination in 6 1995; am I correct? 7 A. I'm not seeing -- maybe I'm 8 missing it, but I'm not seeing any 9 indication that groundwater was ever 10 analyzed at this site, so it's not 11 possible to say whether or not MTBE 12 contamination of the groundwater might 13 be present. 14 Q. With regard to the 15 excavation of USTs at this location, did 16 you review a report indicating that in 17 November of 1994 USTs for storage of 18 gasoline were removed at the location? 19 A. Indications are -- the site 20 summary indicates that from November 9 21 to 11 of '94 six USTs were excavated. 22 Q. And with regard to those 23 six USTs, were there soil samples 24 collected from the excavation to</p>	<p>1 see. So we really don't have a complete 2 picture of the contamination at this 3 facility. 4 Q. With respect to the 5 facility, do you know if the spill file 6 and spill number were closed by the DEC? 7 A. The site summary indicates 8 that spill number 94-10736 -- is that 9 the spill in question? 10 Q. Yes, sir. 11 A. The spill number was closed 12 in a letter dated October 24, 1999, from 13 the DEC to Exxon. 14 Q. With regard to the Exxon 15 service station at 118-11 Atlantic 16 Avenue, Richmond Hill, Queens, can you 17 state an opinion with respect to that 18 facility to some reasonable degree of 19 scientific or engineering certainty, 20 that a leak or spill at this station 21 resulted in a 2,000-gallon release of 22 gasoline with MTBE into groundwater in 23 the regional aquifer beneath the site? 24 A. With the information at</p>
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<p>1 determine if there were any gasoline 2 compounds present in the soil? 3 A. The summary states that 4 "Bottom soil samples were collected," 5 and that "No VOCs (no MTBE)" was 6 "detected." 7 Q. With regard to this site, 8 the groundwater is located, according to 9 the reports that you reviewed, 40 to 50 10 feet below the ground surface? 11 A. That's the indication on 12 the site summary, that's correct. 13 Q. And with regard to the work 14 that you performed in this case, did you 15 ever determine whether or not there was 16 a release at this location of 2,000 17 gallons of gasoline with MTBE? 18 A. With the information at 19 hand, it's not possible to determine 20 whether or not a release of 2,000 21 gallons or more or less than that 22 occurred at this facility. There's no 23 sampling associated with the dispenser 24 islands or the piping runs that I can</p>	<p>1 hand or, rather, the absence of 2 information associated with this site, 3 it is not possible to say what volume of 4 product might have been released from 5 this facility. 6 Q. Is there anything that you 7 reviewed in this file that indicated 8 that the New York State DEC was 9 unsatisfied with the investigation that 10 was conducted and required Exxon to do 11 further investigation including place 12 borings into groundwater 40 to 50 feet 13 below grade at this site? 14 MS. GOAD: Objection, vague. 15 You may answer if you can. 16 A. I don't have the October 17 24, 1999, letter from DEC to Exxon that 18 indicated site closure for this -- for 19 that particular spill. So I don't -- I 20 really don't have any information 21 available to me to assess whether or not 22 the DEC was satisfied with that or 23 dissatisfied, I should say, with any 24 remedial actions that Exxon may have</p>

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<p>1 releases from a storage system. 2 However, it was not part of my 3 investigation to determine what party or 4 parties may have owned these storage 5 systems at any particular point in time. 6 Q. Were you provided with 7 copies of the tank registration for 8 every one of the stations that you 9 reviewed in your site-specific report by 10 counsel for the City of New York? 11 A. I think some of the tank 12 registrations may have appeared in the 13 files provided with the FOIA request, 14 but I don't know that we had FOIA files 15 for every one of the facilities that we 16 looked at and are presented in my site- 17 specific report. 18 Q. With respect to the work 19 that you performed in this case, did you 20 form any opinions to any reasonable 21 degree of scientific or engineering 22 certainty as to whether any owner or 23 operator of tanks in Queens for the 24 sites that you reviewed failed to comply</p>	<p>1 conduct a review specifically to 2 determine whether or not any of the 3 operating practices at any of these 4 facilities was consistent with industry 5 practices or local requirements. 6 Q. With regard to the 7 facilities you reviewed, you did review 8 files pertaining to a service station at 9 118-29 Queens Boulevard, a Consolidated 10 Edison facility. Do you have those 11 records before you? 12 A. I have a site summary for 13 that facility in front of me. 14 Q. And with respect to that 15 particular site, in looking at the 16 corrected version of Appendix C to your 17 report, which is now in a corrected form 18 appended to your rebuttal report, did 19 you for this location estimate the 20 volume of gasoline released at this 21 facility? I believe it appears on page 22 4. 23 No, I misspoke. 24 Yes, it does. It appears on</p>
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<p>1 with the customs, standards, and 2 practices of the industry at the 3 relevant time when leaks or releases 4 occurred? 5 A. The focus of my 6 investigation was the volume and the 7 timing and then the origin of releases 8 from petroleum storage systems. I did 9 not attempt to do a regulatory 10 compliance investigation for any of 11 these facilities. 12 Q. Did you at any time 13 undertake to determine whether or not 14 any of the parties associated with the 15 operation of any of these service 16 stations failed to comply with the 17 standards and practices of the industry 18 and therefore were negligent in 19 operating the stations? 20 MS. GOAD: Objection, calls 21 for a legal conclusion. 22 A. My assignment in this case 23 was to look at the volume, timing, and 24 origin of releases, and I did not</p>	<p>1 page 4 of 8 under "Defendant Sites" and 2 I believe it's the third one down. 3 A. For one particular spill, 4 Spill No. 96-14049, the spill report 5 indicated that 1 ounce of motor oil was 6 spilled and cleaned up. So that number, 7 although it is indicated as -- well, it 8 is less than a gallon, I guess. That 9 number is indicated for one of the spill 10 reports associated with 118-29 Queens 11 Boulevard. 12 Q. And the other report 13 pertains to soil impacts at the time of 14 removal of gasoline tanks; am I correct? 15 A. Well, no soil reports, no 16 soil impacts were identified at the time 17 of tank removal in 1997, but a site 18 investigation in 2001 discovered some 19 gasoline-contaminated soil. 20 Q. With regard to the 21 facility, 118-29 Queens Boulevard, was 22 there evidence in the file to confirm 23 that there was a release of 2,000 24 gallons of gasoline at the site?</p>

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<p>1 A. We have evidence of 2 gasoline contamination, but with the 3 evidence at hand, I don't think we can 4 determine the exact volume that was 5 released, whether that was 10 gallons, 6 2,000 gallons, or 20,000 gallons. 7 Q. With respect to the work 8 that you performed in this case, at any 9 time in your work on the matter did 10 Mr. Terry come to you and solicit your 11 opinion as to whether or not modeling 12 50-, 500-, or 2,000-gallon spills was 13 reasonable for any of the sites that you 14 looked at? 15 A. He did not come to me 16 personally. I believe in the course of 17 one of our conference calls he 18 referenced that he was using volumes of 19 50, 500, and 2,000 gallons as release 20 volumes for those facilities where 21 release quantities were not known. 22 Q. With respect to the work 23 that you performed in this case, did you 24 ever form an opinion to a reasonable</p>	<p>1 some cases. 2 If we look at a time frame 3 of 12 years when MTBE was prevalent in 4 the New York City gasoline supply, a 5 volume of 2,000 gallons is less than a 6 gallon a day being released. A system 7 leaking at that rate would have been 8 considered tight under the EPA 9 guidelines. 10 So I think that the 11 numbers, as far as I'm concerned, are -- 12 would be appropriate numbers to use when 13 you don't have much of anything else to 14 go by. 15 Q. With respect to the work 16 that you performed in this case, what 17 method did you use to determine that the 18 range of 50, 500, or 2,000 gallons was a 19 reasonable range to be used at each of 20 the sites that you reviewed as priority 21 sites? 22 A. I didn't do a site-by-site 23 analysis of how those numbers might be 24 used at a site. I was looking at a --</p>
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<p>1 degree of scientific or engineering 2 probability that selecting release 3 volumes of 50, 500, or 2,000 gallons for 4 releases at the service stations for 5 which you reviewed files was appropriate 6 or representative of the releases that 7 you observed in the records? 8 MS. GOAD: Objection, vague 9 as to "representative." 10 You may answer. 11 A. In the absence of other 12 information, I think that using volumes 13 of 50, 500, and 2,000 is a reasonable -- 14 those are reasonable numbers to use, 15 given the information such as we have at 16 hand here in Queens. 17 Q. And what do you base that 18 on? 19 A. My general experience in 20 investigations, my review of inventory 21 records in a lot of cases. Those are 22 indicative of a range of volumes that 23 seems reasonable to me, in fact, 24 probably a little bit conservative in</p>	<p>1 from a global perspective, those are 2 reasonable numbers to use based on what 3 I've seen in terms of release volumes 4 from various kinds of facilities in my 5 last 25 years-plus of working in this 6 field. 7 Q. With respect to the sites 8 that you looked at, can you tell us in 9 the list in your report which ones are 10 the priority sites? 11 A. In which report? 12 Q. In your site-specific 13 report, which of the service station 14 sites that you reviewed are the priority 15 sites? 16 A. They are not identified as 17 priority or nonpriority sites in the 18 site-specific report. 19 Q. With respect to the work 20 that you performed in this case -- 21 A. Except in Appendix C. If 22 you look at the table for Appendix C, I 23 believe they are broken down by 24 plaintiff and defendant in terms of the</p>

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